HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 406 of 2004 (S/S)

Smt. Chitra Dheer

Vs.

State & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 26.4.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 406 of 2004 (S/S)

Smt. Chitra Dheer ….Petitioners

versus

Union of India & others ….Respondents

Sri P. Tripathi, Advocate counsel for the petitioners
Standing Counsel for the State of Uttaranchal.
Smt. Beena Pandey, Advocate, Standing counsel for U.P.
Sri Rakesh Thapliyal, Advocate, Standing Counsel for Central Govt.

Dated:-26.4.2004

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

Present writ petition has been filed for the issue of a writ order or direction in the nature of mandamus commanding the respondents to decide the options submitted by the petitioners for relieving them for the State of Uttar Pradesh.

Brief facts giving rise to the present writ petition are that the petitioners are presently posted as Art Teacher in Rajkeeya Ashram Paddhti, Uchttar Madhyamik Vidhalya, Gadarpur, District Udham Singh Nagar. She stated that she is the resident of the State of U.P.

The husband of the petitioner is posted in Lakhimpur and she is feeling difficulty and great hardship in maintaining her family life.

The petitioners has stated that she was appointed in the State of U.P. and at the time of creation of State of Uttaranchal she has given her option for her posting in the State of Uttar Pradesh. It was stated by the Petitioners that the advisory committee has not considered her option as yet.

The petitioners have prayed in the writ petition that they may be relieved from Uttaranchal but no orders have been passed for relieving them for the State of Uttar Pradesh.

Petitioners has stated in the writ petition that the Central Govt. has not framed any policy for final allocation and as such the petitioners is suffering due to inaction on the part of the Central Government.

Section 73 of the Uttar Pradesh Reorganization Act, 2000 provides that every person shall continue to serve provisionally and thereafter the Central Government shall determine the final allocation for service. Section 73 (1), (2), (3) reads as under:-

"*Provisions relating to other services. – (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs*

of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this Sub-section issued after *the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.*

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub - section (2) to a successor State, shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

The advisory committee has been constituted under Uttar Pradesh Reorganization act 2000 by virtue of section 76 of the act. It reads as under:-

"Advisory Committees.–The Central Government ma, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to-

(a) the discharge of any of its function under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

Counsel for the petitioners has also referred section 77 of the Uttar Pradesh Reorganization Act 2000 with referred to the power of the Central Government . It reads as under:-

"Power of Central Government to give directions- The Central Government may give, such directions to the Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

The grievance of the petitioners is that she may be directed to be relieved in pursuance of sub-clause 2 of section 73 of the Act, for State of Uttar Pradesh for which they have given their option.

In Writ Petition No. 457 (S/B)2003 Udai Pratap Singh Vs. State of U.P the Division Bench of this Court has has passed the following order:-

"Under Section 73(2), the Central Government is given the power to allocate the cadres by general or special order of allotment between the two States. Section 76 provides for setting up of an Advisory Committee to assist the Central Government. By the impugned order dated 11th September 2002, the Central Government has issued directions allocating the various cadres between the two states. The Central Government has issued these directions pursuant to the authority given by the Legislature to the Central Government."

" The Central Government had constituted an Advisory Committee under Section 76. That Committee submitted its report on 28th April 2001/10th May 2001. Their report has been accepted by the Central Government as indicated by letter dated 4th September 2001 (annexure-4). We may clarify that the report of the Advisory Committee has not been fully accepted by the Central Government."

The Division Bench in Writ Petition No. 451 (S/B)/2003 Narendra Kumar Vs. State of Uttaranchal has passed the following order:-

"Under Section 73 of the U.P. Reorganization Act, 2000, final allocation of all State Services personnel between the successor States

shall decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

Similar matter was also decided by the Bench Consisting of Hon'ble P.C Verma J. His Lordship has passed the following order:-

"Heard Learned Counsel for the parties. The controversy is squarely covered by the order passed by Division Bench of this Court in W.P. No. 1426 (S/B)of 2001, Mulayam Singh Vs. State of Uttaranchal and others, on 3-6-2003. The petitioners are also relegated to approach the Advisory Board with fresh representation and same be disposed of as observes in the aforesaid writ petition. With the aforesaid observation, the writ petition is disposed of."

In the light of the aforesaid observations the petitioners is permitted to make their representations before the Advisory Committee of Union of India. The Counsel for the Union of India has submitted that the Advisory Committee of the Central Government is taking suitable steps to finally allocate the persons who have given their options for the State of U.P. The petitioner, therefore, is directed to approach the Advisory Committee who shall consider the same in accordance with law.

The petitioners apprehend that they will not be heard by the Advisory Committee for relieving the petitioners in accordance with

his options. The apprehensions is misconceived. Suffice it to state that it is rule natural justice that no one should be condemned unheard.

In the case Smt. Maneka Gandhi vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

"In England, the rules was thus expressed by Byles J. in Cooper vs. wandsworth Board of Works: (1863) 14 CB (NS) 180:

" The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam (says God), "where are thou? Hast thaou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

The judgment in the case of Menka Gandhi (supra) has been followed in the case of West Bengal Electricity Regulatory

Commission vs. C.E.S.C. Ltd. JT 2002 (7) SC 578, relying upon the case of Mrs. Maneka Gandhi vs. Union of India & Another, 1978 (1) SCC 248 as under:

"The right of audi alteram partem is a valuable right recognised even under the India Constitution. See Mrs. Menaka Gandhi vs. Union of India and another, 1978 (l) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by courts."

The representation along with her option shall be considered by the advisory committee of the Union of India for relieving the petitioner for the State of U.P. The representation of the petitioner shall be disposed of within a period of 6 weeks after production of the certified copy of the order.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

26.4.2004 Sd/-
*Dhyani